

# State of Wisconsin, Department of Revenue

DIVISION OF STATE AND LOCAL FINANCE, BUREAU OF PROPERTY TAX, 2135 Rimrock Road, P.O. Box 8971, MS6-97, Madison, WI 53708-8971

## REAL ESTATE TRANSFER NEWS (RETN)

MARCH 2004

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

Wisconsin Department of Revenue  
Division of State & Local Finance  
Bureau Property Tax  
P.O. Box 8971, MS 6-97  
Madison, WI 53708-8971

This RETN may be found on the Internet at <http://www.dor.state.wi.us/ust/retn.html>

The following item is repeated from the November 2003 RETN due the importance of the matter. The Instructions (PE-500a R. 12-03) <http://www.dor.state.wi.us/ust/pe-500a.pdf> and Criteria For A Completed Real Estate Transfer Return (PE-100 R. 12-03) <http://www.dor.state.wi.us/pubs/slf/pe100.pdf> have been changed requiring disclosure of any type of seller financing.

- 1Q. I am selling my house and am giving back a "second mortgage" which may or may not be forgiven. How is the transfer form filled out for Section VII. GRANTEE'S FINANCING, Line 44?**
- A.** More than one box **must** be checked. Check the box "Obtained from seller" and any additional box as to where the primary financing is obtained. In addition to a "second Mortgage", any type of "financial arrangement" from the seller such as "credit", "gift", "donation" etc. must have the box "Obtained from seller" checked in addition to any other box where the balance of the financing is obtained.
- 2Q. Can another entity be a member of a LLC and be exempt from transfer fee per s. 77.25(15s), Stats?**
- A.** No. Transfer fees are due on conveyances to or from entities when another entity is the member, partner or shareholder of that entity. The use of exemptions per s. 77.25(15), (15m) and (15s), Stats. requires the entity ownership to be humans. This was decided by F.M. MANAGEMENT COMPANY LIMITED PARTNERSHIP AND F.M. REAL ESTATE COMPANY, LLC, v. WISCONSIN DEPARTMENT OF REVENUE, COURT OF APPEALS DISTRICT I, APPEAL NO. 03-1536, DECISION DATED AND FILED December 23, 2003. This decision can be found at: <http://www.wicourts.gov/ca/opinions/03/pdf/03-1536.pdf>. In the case of multiple ownership interests, an additional requirement is the humans must be family related. See October 1997 RETN, Q2 (<http://www.dor.state.wi.us/ust/retn1097.html>) for examples of the family relationship requirements.
- 3Q. Does the agency portion of the return need to be completed if the grantor is an entity such as a trust, LLC, partnership, etc?**
- A.** Yes, Section, X. CERTIFICATION, the person signing for the entity must complete the agent portion of Lines 53 through 61.

**4Q. I used an improper exemption and was assessed additional transfer fee with interest and penalty. I did not intentionally use the exemption, can the penalty be waived?**

- A.** No. The penalty is imposed per s. 77.26(8), Stats. "If the department of revenue determines that the value reported on the return under s. 77.22 is understated by 25% or more or that an exemption was improperly claimed under s. 77.25, the department shall assess and collect a penalty of \$25 or 25% of the additional fee due, whichever is greater, in the manner that additional transfer fees are collected. As determined in the above decision in APPEAL NO. 03-1536, "First, we doubt that the Department has any discretion under Wis. Stats. § 77.26(8) whether to apply the penalty if there is an improper claim for an exemption. The statute uses the word "shall," and, generally, "shall" creates a mandatory duty."

**5Q. If there is more than one grantor, can we check the box and put "See Attached" on Line 1.**

- A.** No. Lines 1 through 10 MUST be completed. When there are more than one grantors, check the box "If more than one..." and complete Lines 1 through 10 with the information requested for one of the grantors. You may elect to attach an addendum with the remaining names and information as requested. This instruction also applies to the grantee's section. A related item regarding addendum's and social security numbers can be found in the RETN, October 2001, 2Q. ( <http://www.dor.state.wi.us/ust/retn1001.html> )

**6Q. I am gifting property to a public school district, is this conveyance exempt from fee?**

- A.** Yes, a gift to a public school district is exempt from fee per s. 77.25(2g), Stats. Note that a gift to a private school is subject to fee per Tax 15.03(5) Wis. Adm. Code which states: "conveyances between an individual and a tax exempt organization."